

# ***NEWS RELEASE***

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## ***OFFICE OF THE UNITED STATES ATTORNEY SOUTHERN DISTRICT OF CALIFORNIA***

***San Diego, California***

***United States Attorney  
Carol C. Lam***

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***For Immediate Release***

### **NEWS RELEASE SUMMARY** - March 24, 2006

United States Attorney Carol C. Lam announced that United States District Court Judge Napoleon A. Jones, Jr. today sentenced seven defendants in federal district court in San Diego to serve prison terms for their participation in the operation of Commercial Express, LLC, an organization headquartered in Los Angeles but with boiler rooms in several U.S. cities, including San Diego. The organization defrauded more than 700 victims nationwide of over \$18,000,000 through a sophisticated "Ponzi scheme" involving investments to buy television time to produce and air direct response commercials to advertise and sell a number of different products. The defendants and their terms of confinement were: Mark D. McClafferty (57 months); Joel Alan Fein (27 months); Timothy McNeill Hazzard (27 months); Grace Na (10 months, split sentence); Bill Wayne Whitely (27 months); Randolph Scott Ross (27 months), and Susan M. Hogan (41 months). Judge Jones also sentenced each defendant to serve three years of supervised release following release from prison. With regard to restitution for the victims of the crime, Judge Jones ordered McClafferty, Fein, Hazzard and Ross each to pay \$15,468,116; Na was ordered to pay \$13,021,285; Whitely was ordered to pay \$6,053,545; and Hogan was ordered to pay \$5,666,810. According to Assistant U.S. Attorney Steven

A. Peak, the lead prosecutor handling the case, prior to their sentencing Fein and Hazzard each paid \$150,000 toward their mandatory restitution orders. Peak said it is unusual in telemarketing cases for victims actually to receive restitution and although it is unlikely that the victims will recover their entire losses, they will receive a portion of them through the restitution order imposed by the Court.

All defendants previously pled guilty to various counts of conspiracy, securities fraud, mail fraud, and wire fraud. In addition, four defendants earlier pled guilty to money laundering charges and were ordered by Judge Jones to pay criminal forfeiture in the following amounts: McClafferty (\$1,707,166.90); Fein (\$192,791.66); Hazzard (\$192,791.66); and Ross (\$39,531.71). In addition, Fein, Hazzard, Ross and Whitely pled guilty to various tax-related charges.

Peak said that documents filed with the court and admissions by the defendants during their guilty pleas, established that McClafferty, Fein and Hazzard were officers in Progressive Financial and the owners and operators of Commercial Express, LLC, through which they conspired with others to fraudulently sell securities. Na was the comptroller of the venture until she became the president near the end of the scheme. Whitely and Hogan owned two of the sales rooms, also called boiler rooms, and Ross ran Hogan's sales room on a day-to-day basis. Commercial Express and its sales rooms sold securities by means of telemarketing throughout the United States. They offered to the investing public the opportunity to purchase "Media Units" for the amount of \$5,000 or \$10,000 per unit or "Equity Participations" for a minimum investment of \$100,000. A Media Unit purported to be a purchase of a minimum of 80-100 media broadcast spots with the investor to profit from the gross revenues from sales generated from direct response commercials whose media buys were funded from those units. An Equity Participation purported to be an ownership interest in Commercial Express with participation in the business' worldwide profits. According to Peak, the Media Units and Equity Participations were not registered as required under the federal and state securities laws, but rather were marketed by the defendant as legitimate investments.

The participants in the scheme, which operated from June 1997 until September 1998, knowingly made false statements to potential investors, among other things, telling them that monies invested in

Commercial Express would be used to pay for direct response television advertising, and claimed that Commercial Express already had a variety of demonstrably profitable products. Investors were also told, falsely, that they would receive returns of between ten and twenty-six percent (10% - 26%) per quarter derived from the profits on the sale of products advertised on television. In addition, the participants knowingly failed to tell investors material information, such as that Commercial Express' television advertising products were not profitable, and that the "distributions" paid by Commercial Express to early investors were actually monies diverted from later investors, not from profits. The scheme was carried out by the use of the U.S. mail and Federal Express and by telephone and fax, in violation of the mail and wire fraud statutes.

United States Attorney Lam said that the Corporate-Investment Fraud Task Force (formerly the San Diego Boiler Room Task Force), an organization made up of representatives from the United States Attorney's Office, the Federal Bureau of Investigation, the Internal Revenue Service-Criminal Investigations, the United States Postal Inspection Service, the California Attorney General's Office and other federal, state and local agencies in San Diego and Southern California had investigated this telemarketing organization for over three years and had worked closely with the U.S. Securities and Exchange Commission and the Federal Trade Commission, each of which had investigated Commercial Express for regulatory violations. According to U.S. Attorney Lam, prosecutors from three Department of Justice components also participated in the investigation, including the Fraud Section, Criminal Division, the Antitrust Division, and the Tax Division. U.S. Attorney Lam specifically acknowledged the outstanding work of U.S. Department of Justice Trial Attorneys Patrick M. Donley and Katherine A. Schlech, and California Supervising Deputy Attorney Ronald D. Smetana in the investigation and prosecution of this case.

United States Attorney Lam said, "These defendants will be doing hard time for getting what they thought was easy money."

## **DEFENDANTS**

Mark D. McClafferty  
Joel Alan Fein  
Timothy McNeill Hazzard  
Grace Na  
Bill Wayne Whitely  
Randolph Scott Ross  
Susan M. Hogan

## **SUMMARY OF CHARGES**

Title 18, United States Code, Section 371 – Conspiracy to Commit Securities Fraud  
Maximum penalty per count: five years in custody; fine of \$250,000

Title 15, United States Code, Sections 78j(b) and 78ff – Securities Fraud  
Maximum penalty per count: ten years in custody; fine of \$1,000,000

Title 18, United States Code, Section 1341 – Mail Fraud  
Maximum penalty per count: five years in custody; fine of \$250,000

Title 18, United States Code, Section 1343 – Wire Fraud  
Maximum penalty per count: five years in custody; fine of \$250,000

Title 18, United States Code, Section 1957 – Engaging in Monetary Transactions Greater than \$10,000 in Criminally-Derived Property  
Maximum penalty per count: ten years in custody; fine of \$250,000

Title 18, United States Code, Section 1956(h) - Conspiracy to Commit Money Laundering  
Maximum penalty per count: twenty years in custody; fine of \$500,000 (or twice the involved funds)

Title 18, United States Code, Section 1956(a)(1)(A)(I) - Money Laundering (Promotion)  
Maximum penalty per count: twenty years in custody; fine of \$500,000 (or twice the involved funds)

Title 26, United States Code, Section 7201 - Tax Evasion  
Maximum penalty per count: five years in custody; fine of \$250,000

Title 26, United States Code, Section 7203 – Failure to File Individual Income Tax Return  
Maximum penalty per count: one year in custody; fine of \$100,000

### **Criminal Forfeiture Allegations**

Title 18, United States Code, Sections 982(a)(1) and 1956(h)  
Title 18, United States Code, Sections 982(a)(1) and 1956(a)(1)(A)(I)  
Title 18, United States Code, Sections 982(a)(1) and 1957

## **AGENCIES**

Corporate-Investment Fraud Task Force, Internal Revenue Service - Criminal Investigation, Federal Bureau of Investigation, U.S. Postal Inspection Service, California Attorney General's Office/California Department of Justice, U.S. Department of Justice- Fraud Section, Criminal Division, Tax Division, and Antitrust Division